



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2017-0012; Notice 2]**

### **BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** BMW of North America, LLC (BMW), has determined that certain model year (MY) 2017 BMW 330i and 330i xDrive motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less*. BMW filed a noncompliance report dated January 26, 2017, and subsequently petitioned NHTSA on February 17, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of BMW's petition.

**FOR FURTHER INFORMATION CONTACT:** Kerrin Bressant, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-1110, facsimile (202) 366-3081.

#### **SUPPLEMENTARY INFORMATION:**

**I. Overview:** BMW has determined that certain MY 2017 BMW 330i and 330i xDrive motor vehicles do not fully comply with paragraphs S4.3(c) and S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation*

*Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less* (49 CFR 571.110). BMW filed a noncompliance information report dated January 26, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. BMW subsequently petitioned NHTSA on February 17, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of BMW's petition was published in the Federal Register (82 FR 17511) with a 30-day public comment period, on April 11, 2017. No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2017-0012."

**II. Vehicles Involved:** Approximately 3,300 MY 2017 BMW 330i and 330i xDrive motor vehicles, manufactured between August 1, 2016, and December 1, 2016, are potentially involved.

**III. Noncompliance:** BMW explains that the noncompliance is that the vehicle placard on the subject vehicles states that the vehicles were equipped with 18-inch tires when in fact the subject vehicles were actually equipped with 17-inch tires. The vehicle placard also states that the cold tire inflation pressure for the rear tires is 240 kPa/35 psi when it should read 220 kPa/32 psi. Thus, the subject vehicles do not fully comply with paragraphs S4.3(c) and (d) of FMVSS No. 110.

**IV. Rule Text:** Paragraphs S4.3(c) and (d) of FMVSS No. 110 include the requirements relevant to this petition:

- Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in paragraph S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in paragraph S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door.
- Vehicle manufacturers' recommended cold tire inflation pressure for the front, rear and spare tires are subject to the limitations of paragraph S4.3.4. For full-size spare tires, the statement "see above" may, at the manufacturer's option, replace manufacturer's recommended cold tire inflation pressure. If no spare tire is provided, the word "none" must replace the manufacturer's recommended cold tire inflation pressure.
- Tire size designation, indicated by the headings "size" or "original tire size," and "spare tire" or "spare," for the tires installed at the time of first purchase for purposes other than resale. For full-size spare tires, the statement "see above" may, at the manufacturer's option, replace the tire size designation. If no spare tire is provided, the word "none" must replace the tire size designation; ...

**V. Summary of BMW's Petition:** BMW described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, BMW submitted the following reasoning:

**1. Overview of Tire Information Placards for 17-inch Tires and 18-inch Tires:**

Although affected vehicles were properly equipped with 17-inch tires, the FMVSS No. 110 tire information placard states that the vehicles were equipped with 18-inch tires. The placard includes the manufacturer's recommended cold tire inflation pressure and tire size designation for the 18-inch tires.

Additionally, affected vehicles were equipped with a tire information placard intended for the BMW 320i model, although affected vehicles are the BMW 330i and 330i xDrive models.

Notably, the tire information placard for the 18-inch rear tires denotes a cold tire inflation pressure value of 35 psi, whereas the placard for the 17-inch rear tire denotes a cold tire inflation pressure value of 32 psi. This will not result in a vehicle overload condition as explained in further detail below.

**2. Using Tire Information Placard to Set Tire Pressure:** If a vehicle operator uses the tire information placard to set the tire pressures, the tire pressures will be set at 32 psi and 35 psi for the front and for the rear tires, respectively. This will not lead to a vehicle overload condition as explained below:

For the front tires, the tire information placard displays the manufacturer's recommended cold tire inflation pressure value which is identical to that which is required for the tires equipped on the vehicles.

For the rear tires, the tire information placard displays the manufacturer's recommended cold tire inflation pressure value, which is larger than that which is required for the tires equipped on the vehicle.

Therefore, a vehicle operator would not inflate the front and rear tires to a tire pressure which is lower than that which is required. In other petitions in which there exists the possibility to inflate tires to a tire pressure value which is lower than the required value, calculations can be performed to show that even in those cases, the equipped tires at the lower tire pressure value still have sufficient load carrying capacity, and therefore will not lead to a vehicle overload condition. Such calculations can be performed using either axle load limits or using individual tire load limits.

However, for the vehicles that are the subject of this petition, that possibility does not exist. The vehicle operator would not underinflate the front tires or the rear tires; therefore, such calculations are not necessary for this petition.

3. **Using Other Information Sources to Set Tire Pressure:** If a vehicle operator notices that the tires depicted on the tire information placard do not correspond to the tires equipped on the vehicle, there are a number of information sources and services available, which can be used to identify the correct tire pressure and, therefore, achieve the proper inflation level for the tires equipped on the vehicle.

- Sources That Point to the Vehicle Owner's Manual

-FMVSS No. 110 paragraph S4.3(f) requires that the tire information placard contain the following statement: "See Owner's Manual for Additional Information".

Therefore, the tire information placard will help point the vehicle operator to the Owner's Manual in order to identify the correct tire inflation pressures for use on the vehicle.

-FMVSS No. 138 paragraph S4.5(a) requires that the Owner's Manual contain the following text:

“Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should determine the proper tire inflation pressure for those tires.)”

Vehicle Operators who attempt to check the vehicle’s tire pressure on a routine schedule (e.g. monthly, as noted above), or when necessary, would be pointed to the Owner’s Manual for additional clarifying information. Therefore, after reviewing this information, it is likely that they would inflate the tires to the recommended cold tire inflation pressure. This is explained in further detail below.

A vehicle operator could check the **specific tires installed** on the vehicle which, in this case, are 17-inch tires. The information that is stamped onto the sidewall of the tires identifies the tire size. Subsequent to checking and identifying the installed tires, the vehicle operator could consult the vehicle Owner’s Manual, or contact BMW Roadside Assistance™, BMW Assist™, or BMW Customer Relations, for further information in order to set the correct tire pressure. This is explained in further detail below.

- Owner’s Manual

The vehicle Owner’s Manual contains information pertaining to the various tire sizes and tire pressures available for use on the affected vehicles.

Affected vehicles contain a tire information placard denoting 18-inch tires having a front, and rear, tire pressure of 32 psi and 35 psi. However, affected vehicles

(BMW 330i, 330i xDrive) were equipped with 17-inch tires in which a front, and a rear, tire pressure should be 32 psi. Therefore, a vehicle operator would be able to check the Owner's manual, identify the correct tires equipped on the vehicle, and then set the tire inflation pressures to the correct levels.

Additionally, affected vehicles are also equipped with an in-vehicle electronic Owner's Manual accessed through the iDrive™ controller containing the same information as in the hardcopy Owner's Manual.

Furthermore, the electronic Owner's Manual also contains contact information for BMW Roadside Assistance™, and if equipped also BMW Assist™, and BMW Customer Relations. Vehicle operators can use these additional information sources and services to identify the correct tires equipped on the vehicle and then set the tire inflation pressures to the correct levels.

- BMW Roadside Assistance™

BMW Roadside Assistance™ (available 24 hours/day) representatives have information available indicating by vehicle model and model year, all of the available tire sizes and specifications for the affected vehicles. All affected vehicles contain a reference to, and instructions for contacting, BMW Roadside Assistance™ in the vehicle Owner's Manual. Therefore, if contacted, BMW Roadside Assistance™ would be able to help the vehicle operator determine the correct tire pressure for use on the vehicle.

Vehicle operators are able to contact BMW Roadside Assistance™ using the toll-free telephone number located:

- on the BMW Roadside Assistance™ Card located in the vehicle's portfolio
- on one, or more, BMW Roadside Assistance™ specific Labels in the vehicle
- within the vehicle's Quick Reference Guide
- within the vehicle's Service and Warranty Book

Vehicle Operators are also able to contact BMW Roadside Assistance™ using the:

- in-vehicle iDrive™ controller and menu option for BMW Roadside Assistance™.
- in-vehicle emergency call button on the overhead console.

- BMW Assist™

BMW Assist™ (available 24 hours/day) representatives have information available indicating by vehicle model and model year, all of the available tire sizes and specifications for the affected vehicles. All affected vehicles contain a reference to, and instructions for contacting, BMW Assist™ in the vehicle Owner's Manual. Therefore, if contacted, BMW Assist™ would be able to help the vehicle operator determine the correct tire pressures for use on the vehicle.

Vehicle Operators are able to contact BMW Assist™ by using the:

- in-vehicle iDrive™ controller and menu option for BMW Assist™
- in-vehicle emergency call button on the overhead console

Vehicles with BMW Assist™ contain a BMW Assist™ Book located in the vehicle's portfolio with contact information for BMW Assist™, BMW Roadside Assistance™, and BMW Customer Relations.

- BMW Customer Relations

If a vehicle operator contacts BMW Customer Relations and provides the Vehicle Identification Number, a Customer Relations Representative will be able to inform the vehicle operator of the specific vehicle configuration. Therefore, if contacted, BMW Customer Relations would be able to help the vehicle operator determine the correct tire pressures for use on the vehicle.

Vehicle Operators are able to contact BMW Customer Relations by:

- using the toll-free telephone number located in the vehicle Owner's Manual and the Service and Warranty Book
- using the in-vehicle iDrive™ controller and menu option for BMW Customer Relations
- contacting BMW Assist™ who can, if necessary, transfer the vehicle operator to BMW Customer Relations

#### **4. Field Experience:**

##### Owner Contacts to BMW Customer Relations

BMW Customer Relations has not received any contacts from vehicle owners regarding this issue. Therefore, BMW is unaware that any vehicle owner has encountered this issue.

##### Accidents/Injuries

BMW is unaware of any accidents or injuries that have occurred as a result of this issue.

5. **Prior NHTSA Grants to Manufacturer Petitions:** NHTSA has previously granted petitions for inconsequential noncompliance regarding FMVSS No. 110 involving vehicles whereby the tire information placard contained tire size and tire pressure information which did not match the tires equipped on the vehicle. In particular, it was shown that although the tire information placard displayed the manufacturer's recommended cold tire inflation pressure which was a smaller value than that which was required for the tires equipped on the vehicle, the load carrying capacity of the equipped tires, at this smaller tire pressure, was still sufficient and would not lead to a vehicle overload condition.

For the affected vehicles that are the subject of this petition, the FMVSS No. 110 tire information placard displays the manufacturer's recommended cold tire inflation pressure value for the front tires which is identical to that which is required for the tires equipped on the vehicle and, displays the manufacturer's recommended cold tire inflation pressure value for the rear tires which is larger than the value which is required for the tires equipped on the vehicle. Consequently, there is no risk of an underinflated tire, the load carrying capacity of the equipped tires is still sufficient and, therefore, there is no risk of a vehicle overload condition.

Nevertheless, as a reference, and for comparison to this petition, NHTSA has granted petitions from manufacturers in cases where the tire information placard displayed a tire inflation pressure value which was smaller than that which was required for the tires equipped on the vehicle. (See BMW, 81 FR 62970, September 13, 2016; BMW, 78 FR 76408, December 17, 2013; and Volkswagen, 78 FR 28287, May 14, 2013)

6. **Vehicle Production:** Vehicle production has been corrected to conform to FMVSS No. 110 paragraphs S4.3(c) and S4.3(d).

BMW concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

**VI. NHTSA Analysis:** BMW explains that the noncompliance is that the subject vehicles were equipped with 17-inch tires, although, the vehicle placard (referred to as the tire and information placard by BMW) states that the vehicles were equipped with 18-inch tires and includes the manufacturer's recommended cold tire inflation pressure and tire size designation for the 18-inch tires. Therefore, the affected vehicles do not conform to FMVSS 110 paragraphs S4.3(c) and 4.3(d).

The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and to prevent overloading.

FMVSS No. 110 requires that the original tires installed on a vehicle and the tires listed on the vehicle placard be the same size and that the tires, at the manufacturer recommended inflation pressure, be appropriate for the designed vehicle maximum load conditions. If a customer were to look at the vehicle placard to determine recommended inflation pressure values they would see values intended for the 18-inch tire and not the 17-inch tire. If the customer does not notice that their vehicle has 17-inch tires installed they may use the 18-inch tire inflation pressure values, which are the same for the tires on the front axle but larger for the tires on the rear axle. If this were the case, calculations show that the 17-inch tire load carrying capacity of the rear tires at the 18-inch tire delineated pressure is appropriate for the subject vehicle's rear

GAWR. Specifically, if a vehicle owner inflated their tires to the inflation pressure listed for the 18-inch tires, the result would be an increase to 240 kPa/35 psi for the rear tires and a net increase in load capacity for the vehicle overall. Alternatively, if the vehicle owner installed 18-inch tires on the subject vehicle, those tires at the listed cold inflation pressure would also be appropriate, as required by FMVSS No. 110, for the subject vehicle's front and rear GAWRs.

The agency agrees with BMW that the subject noncompliance is inconsequential to motor vehicle safety and that there is no risk of possible underinflating or overloading of the tires and should a vehicle owner question the correct tire size or corresponding recommended cold tire inflation pressures for their vehicle, this information is available in other locations such as the sidewall markings and the owner's manual.

**VII. NHTSA's Decision:** In consideration of the foregoing analysis, NHTSA finds that BMW has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the subject vehicles is inconsequential to motor vehicle safety.

Accordingly, BMW's petition is hereby granted and BMW is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on

the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

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